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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/014,112      | 12/11/2001  | Harold Aaron Ludtke  | SONY 3.0-020        | 3954             |

530 7590 12/22/2004

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EXAMINER

CANGIALOSI, SALVATORE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3621

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/014,112

Applicant(s)

LUDTKE ET AL.

Examiner

Salvatore Cangialosi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-7, 10</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

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1. Claims 1-108 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Taken as a whole the claims recite an undue multiplicity of claims by virtue of the unreasonable number of claims presented would tend to obfuscate, confuse, and becloud the claimed invention. Because the examiner believes that in his judgment that twenty-five (25) claims are sufficient to properly define applicants' invention, applicants are required to select certain claims, not to exceed twenty-five for examination on the merits, See M.P.E.P. 2173.05(n). To be complete **the non-selected claims must be cancelled** or the applicant(s) must present appropriate arguments as to why the above rejection is in error. Note most patents (80%) have less than twenty claims while patents in excess of 100 claims are less than 0.344% of all cases filed and thus rare (See Federal Register: October 5, 1998 (Volume 63, Number 192, Page 53507)). Note also the new excess claim fees effective 12/8/04 as evidence of what is considered to be unreasonable.

The applicants arguments filed 11/01/2004 have been considered but are unpersuasive of error inasmuch as the wealth of evidence presented show that the number of claims is unreasonable and the rejection is rare. The rejection under this

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paragraph is made final and claims 15-108 are withdrawn from further consideration.

2. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

3. Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over Kawan (5796832) in view of Dulude et al (6310966).

Regarding claim 1, Kawan (See abstract, Figs. 1-4, 6, Col. 3, lines 1-30, Col. 4, lines 1-15, Col. 8, lines 50-55, claims 1, 5, 19) disclose method for wirelessly effecting a transaction employing a biometric input substantially as claimed. The differences between the above and the claimed invention is the use of specific automatic transmission of a biometric input. It is noted that it is believed that the biometric parameter (See Col. 8, lines 50-55) are functionally equivalent to the claimed

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limitations and that the claim as drawn is readable on any the well established biometric based transaction methods. Dulude et al (See Fig. 4, Col. 5, lines 50-65, Col. 6, lines 1-25) show biometric inputs at a transaction point transmitted over a network. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Kawan because the biometric inputs are conventional functional equivalents with respect to the claim limitations and their employment and comparison is a necessary component of validation and use in a transaction method. Regarding the device limitations of claim 2, Kawan (See Claim 5) show cell phone which is a functional equivalent of the claim limitations. Regarding the device limitations of claim 3, Kawan (See Claim 31) show ATM which is a functional equivalent of the claim limitations. Regarding the internet limitations of claim 4, Kawan (See Col. 3 line 55) show Internet access which is a functional equivalent of the claim limitations. Regarding the information limitations of claim 5, Kawan show point of sale terminal data access which is a functional equivalent of the claim limitations. Regarding the information limitations of claim 6, Kawan show point of sale terminal data access which is a functional equivalent of the claim limitations. Regarding the information limitations of claim 7, Kawan (See Col. 4, lines 55-65) show credit authorization terminal and card which is a functional equivalent of the claim limitations. Regarding the database limitations of claim 8,

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Dulude et al(element 66) show a database which is a functional equivalent of the claim limitations. Regarding the database limitations of claim 9, Dulude et al(element 66) show a database which is a functional equivalent of the claim limitations.

Regarding the fingerprint limitations of claim 10, Kawan (See Col. 8, lines 50-55) show a fingerprint which is a functional equivalent of the claim limitations. Regarding the database comparison limitations of claim 11, Dulude et al(See abstract and element 66) show a database comparison which is a functional equivalent of the claim limitations. Regarding the database comparison limitations of claim 12, Dulude et al(See abstract and element 66) show a database comparison based on biometric generation input and comparison against a stored value which is a functional equivalent of the claim limitations. Regarding the database comparison limitations of claim 13, Dulude et al(See abstract and element 66) show a database comparison based on biometric generation input and comparison against a stored value which is a functional equivalent of the claim limitations.

Regarding the visual limitations of claim 1, Dulude et al(See claim 8) show a database comparison based on biometric generation input and comparison against a stored value which is a functional equivalent of the claim limitations.

Any inquiry concerning this communication should be directed

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to Salvatore Cangialosi at telephone number (703) 305-1837. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell, can be reached at (703) 305-9768.

**Any response to this action should be mailed to:**

Commissioner of Patent and Trademarks

Washington, D.C. 20231

**or faxed to (703)872-9306**

Hand delivered responses should be brought to Crystal Park V, 2451 Crystal Drive, Arlington, Virginia, Seventh Floor(Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3600 Customer Service Office whose telephone number is (703) **308-4177**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3600 Customer Service Office whose telephone number is (703) **308-4177**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be

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obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SALVATORE CANGIALOSI  
PRIMARY EXAMINER  
ART UNIT 222